

THE STATE
versus
COSMORE CHOKO

HIGH COURT OF ZIMBABWE
MWAYERA J
MUTARE, 10 & 11 July 2018

Criminal Trial (MENTAL HEALTH ACT – SECTION 29)

ASSESORS: 1. Mr Magorokosho
2. Mrs Mawoneke

M Musarurwa, for the State
M Mareyanadzo, for the accused

MWAYERA J: The accused was arraigned before the court on a charge of murder as defined in s 47 (1) (a) or (b) of the Criminal Law (Codification) and Reform Act [*Chapter 9:23*]. The State alleges that on 22 November 2013 and at Plot 41, Manda Chief Makoni Rusape, the accused person unlawfully and with intent to kill or realising that there was a real risk or possibility that his conduct might cause death and continued to engage in that conduct despite the risk or possibility struck Kelvin Mutambanuki several times on the head using a steel hoe thereby causing severe injuries from which the said Kelvin Mutambanuki died.

In response to the charge the accused pointed out that he admitted what happened but that it happened when he was mentally unstable. A plea of not guilty was entered.

The State and defence counsels advised that they had taken a position informed by the nature of the accused's plea and the evidence of Dr Walter Mangezi a psychiatrist. They took a position that we proceed with the matter in terms of s 29 of the Mental Health Act [*Chapter 15:12*].

A statement of agreed facts was tendered as exh 1 by consent. It was apparent from the statement of agreed facts that on 22 November 2013 at Plot 41 Manda Nyamukubva, Chief Makoni the accused who was employed by the deceased fatally struck the deceased. The accused used a steel hoe several times to strike the head and neck of the deceased who sustained multiple injuries on the head and neck from which he died. It is also clear from the statement of agreed facts that following the arrest of the accused for the offence of murder,

the accused was examined by Dr Walter Mangezi who concluded that at the time of the commission of the offence the accused was mentally discorded and thus could not formulate the requisite *mens rea* to commit murder. The State and defence counsels by consent presented the affidavit of evidence by Dr Walter Mangezi, photographs depicting deceased after the fatal assault on head and neck, sketch plan by attending details, post mortem report by Dr S. A Makande and certificate of weight of hoe from Zimpost as exh 2-6 respectively. Given the common cause evidence presented and the circumstances of the commission of the offence we agreed with the State and defence counsels that the matter be handled in terms of the Mental health Act [*Chapter 15:12*]. The circumstances of the matter call for the return of a special verdict of not guilty because of insanity.

In view of the fact that the accused seems to have challenges in sourcing medication when out of custody, and that he as given by both defence and State counsel was picked from the bush for purposes of his trial, it is imperative that he gets protection not only for his benefit but for community at large.

It is our considered view that leaving the accused roaming about and staying in the bush without care, medication, protection and guidance would occasion relapse. The thought of such violent attack as occurred in the present case simply because of not administering medication on a person is too ghastly and hazardous a risk, to the accused and community at large.

It appears as submitted by both counsels the accused has no relative willing to accept and assist him as such we find no justification in discharging the accused in a manner tantamount to just throwing him out without seeking to achieve the intended goal which would benefit both accused and society.

The accused still requires management and rehabilitation and it would be improper to prematurely release him. We view institutionalisation of the accused as an imperative and protective measure that will guarantee the safety of the accused and community at large. This position is regarded as appropriate when one holistically considers the circumstances of this case as it is an administrative measure which will enable release of the accused at the ripe and appropriate time by a competent body or Health Review Tribunal as provided for in the relevant Mental Health Act.

In the premises, it is accordingly ordered that:

1. The accused is not guilty because of insanity.

2. The accused be returned to prison for transfer to Chikuribi Psychiatric Unit or such other appropriate institutions for treatment and management until discharged therefrom by a competent body.

National Prosecuting Authority, state's legal practitioners

Mvere Chikamhi & Mareanadzo, accused's legal practitioners